Kastin (Leader) Candy Co. *and* Local 102, Bakery Confectionery, Tobacco & Grain Millers International Union, AFL–CIO. Cases 29–CA–23001 and 29–CA–23105

March 20, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND BRAME

Upon charges filed by the Union on September 27, 1999, and November 4, 1999, the General Counsel of the National Labor Relations Board issued a consolidated complaint on December 10, 1999, against Kastin (Leader) Candy Co., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On January 31, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On February 4, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 18, 2000, notified the Respondent that unless an answer were received by January 25, 2000,[1] a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[1] The motion for summary judgment inadvertently referred to this date as September 23, 1997.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation, with an office and place of business in Brooklyn, New York, has been engaged in the manufacture and wholesale sale of confections. During the 12-month period preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, purchased and received at its Brooklyn facility goods, supplies, and materials valued in excess of $50,000 directly from entities located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent, herein called the unit, constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees excluding office and sales employees, guards and supervisors as defined in the Act.

Since about May 1992, the Union has been the designated exclusive collective-bargaining representative of the unit for purposes of collective bargaining and has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective October 1, 1996 to September 30, 1999, and extended by memorandum of agreement to October 31, 1999.

At all material times, since May 1992, the Union, by virtue of Section 9(a) of the Act, has been the exclusive representative of the unit.

Since about April 1999, the Respondent has failed to continue in effect all the terms and conditions of the 1996–1999 agreement by failing to pay employees earned bonuses as specifically required in article XXIX of the collective-bargaining agreement.

Since about July 1999, the Respondent failed to continue in effect all the terms and conditions of the 1996–1999 agreement by failing to pay employees for accrued vacation as specifically required in article VII, section 1, of the collective-bargaining agreement.

On or about October 25, 1999, the Respondent failed to continue in effect all the terms and conditions of the 1996–1999 agreement by laying off employees and hiring new employees in contravention of the provisions of article IV of the collective-bargaining agreement.

On or about November 3, 1999, the Respondent failed to continue in effect all the terms and conditions of the

agreement by laying off employees out of seniority order in contravention of the provisions of article IV of the collective-bargaining agreement.

The Respondent engaged in this conduct described above without the Union's consent. The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargaining collectively with the representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by, on or about October 25, 1999, laying off employees and hiring new employees in contravention of the provisions of article IV of the collective-bargaining agreement, and, on or about November 3, 1999, laying off employees out of seniority order in contravention of the provisions of article IV of the collective-bargaining agreement, we shall order the Respondent to honor the terms of the 1996–1999 agreement, and offer the laid-off employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights previously enjoyed, and to make them whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(1) and (5) of the Act by, in April 1999, failing to pay employees earned bonuses as specifically required in article XXIX of the collective-bargaining agreement, and since about July 1999, failing to pay employees for accrued vacation as specifically required in article VII, section 1, of the collective-bargaining agreement, we shall order the Respondent to honor the terms of the 1996–1999 agreement, and to make whole its unit employees by paying all contractually required bonuses and accrued vacations, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Kastin (Leader) Candy Co., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the 1996–1999 agreement by, since about April 1999, failing to pay employees earned bonuses as specifically required in article XXIX of the collective-bargaining agreement.

(b) Failing to continue in effect all the terms and conditions of the 1996–1999 agreement by, since about July 1999, failing to pay employees for accrued vacation as specifically required in article VII, section 1, of the collective-bargaining agreement.

(c) Failing to continue in effect all the terms and conditions of the 1996–1999 agreement by, on or about October 25, 1999, laying off employees and hiring new employees in contravention of the provisions of article IV of the collective-bargaining agreement.

(d) Failing to continue in effect all the terms and conditions of the agreement by, on or about November 3, 1999, laying off employees out of seniority order in contravention of the provisions of article IV of the collective-bargaining agreement.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms of the 1996–1999 agreement and, within 14 days from the date of this Order, offer the laid-off employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights previously enjoyed.

(b) Make the laid-off employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(c) Make whole its unit employees by paying all contractually required bonuses and accrued vacation, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs, and within 3 days thereafter notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment re-

cords, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 1999.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 20, 2000

John C. Truesdale, Chairman

Sarah M. Fox, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all the terms and conditions of the 1996–1999 agreement by, since about April 1999, failing to pay employees earned bonuses as specifically required in article XXIX of the collective-bargaining agreement.

WE WILL NOT fail to continue in effect all the terms and conditions of the 1996–1999 agreement by, since about July 1999, failing to pay employees for accrued vacation as specifically required in article VII, section 1, of the collective-bargaining agreement.

WE WILL NOT fail to continue in effect all the terms and conditions of the 1996–1999 agreement by, on or about October 25, 1999, laying off employees and hiring new employees in contravention of the provisions of article IV of the collective-bargaining agreement.

WE WILL NOT fail to continue in effect all the terms and conditions of the agreement by, on or about November 3, 1999, laying off employees out of seniority order in contravention of the provisions of article IV of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms of the 1996–1999 agreement, and WE WILL, within 14 days from the date of the Board's Order, offer the laid-off employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights previously enjoyed.

WE WILL make the laid-off employees whole for any loss of earnings and other benefits they may have suffered as a result of our unlawful conduct, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful layoffs of our unit employees and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the layoffs will not be used against them in any way.

WE WILL make whole our unit employees by paying all contractually required bonuses and accrued vacation, in the manner set forth in the Board's decision.

KASTIN (LEADER) CANDY CO.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all the terms and conditions of the 1996–1999 agreement by, since about April 1999, failing to pay employees earned bonuses as specifically required in article XXIX of the collective-bargaining agreement.

WE WILL NOT fail to continue in effect all the terms and conditions of the 1996–1999 agreement by, since about July 1999, failing to pay employees for accrued vacation as specifically required in article VII, section 1, of the collective-bargaining agreement.

WE WILL NOT fail to continue in effect all the terms and conditions of the 1996–1999 agreement by, on or about October 25, 1999, laying off employees and hiring new employees in contravention of the provisions of article IV of the collective-bargaining agreement.

WE WILL NOT fail to continue in effect all the terms and conditions of the agreement by, on or about November 3, 1999, laying off employees out of seniority order in contravention of the provisions of article IV of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms of the 1996–1999 agreement and WE WILL, within 14 day fron the date of the Board's Order, offer the laid-off employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights previously enjoyed.

WE WILL make laid-off employees whole for any loss of earnings and other benefits they may have suffered as a result of our unlawful conduct, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful layoffs of our unit employees and WE WILL , within 3 days thereafter, notify them in writing that this has been done and that the layoffs will not be used against them in any way.

WE WILL make whole our unit employees by paying all contractually required bonuses and accrued vacation, in the manner set forth in the Board's decision.

KASTIN (LEADER) CANDY CO.

(Employer)

Dated_____By_____

(Representative) (Title)

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor, Brooklyn, New York, 11201-4201. Telephone 718-330-2862.